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UPDATE OF EVENTS:

SAN FRANCISCO BAY/DELTA WATER QUALITY STANDARDS

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SETTING CLEAN WATER ACT STANDARDS IN THE SAN FRANCISCO BAY/DELTA: Achieving Goals through Good Science and Interagency Effort

Gridlock on State Water Quality Standards for the Bay/Delta

For more than a decade, California has been unable to adopt a water quality plan with standards that adequately protect the estuarine habitat and fish and wildlife in the Bay/Delta. Several important interests collide in the Bay/Delta. Consumptive water users have sought increased diversions from the Delta for agricultural irrigation and urban water supplies for the State's burgeoning population. Commercial fishermen, recreational users and environmental groups have demanded greater protection for the Bay/Delta's declining ecosystem. In large part due to the increased diversions, the last decade has seen a dramatic decline in Bay/Delta fish and wildlife resources. Two species, the Delta smelt and the winter-run chinook salmon, were listed for protection under the Endangered Species Act (ESA). A third, the Sacramento splittail, is proposed for listing, and efforts to list spring-run chinook salmon are pending. These listings are just one indication of an entire ecosystem under stress.

In early 1991, after failing at a more comprehensive effort to address the problem, the State of California submitted to EPA a limited revision to its standards under the Clean Water Act. In September 1991, EPA disapproved portions of those water quality standards and advised the State that if it did not adopt acceptable standards within 90 days, EPA would take steps to propose such standards. The State began a new standard-setting process, but in April 1993, the State withdrew its draft decision providing water quality protection for Delta fish and other aquatic species. As a result, under the Clean Water Act EPA was required to promptly propose standards for the Bay/Delta. Shortly thereafter, environmental groups filed a lawsuit seeking to require prompt EPA proposal of appropriate standards. EPA entered into a consent decree in that suit and agreed to propose standards no later than December 15, 1993. After proposing those standards, EPA negotiated a schedule with the environmental plaintiffs committing to a final rule by December 15, 1994.

Federal Cooperation in Bay/Delta Issues

Since the beginning of its active involvement in the Bay/Delta controversy, EPA has pursued a number of important goals. These were (1) bringing the State back into its role as the primary entity responsible for Bay/Delta water quality, (2) coordinating EPA's actions with other Federal activities affecting the estuary, (3) basing any EPA actions on the best available science, and (4) using a habitat or ecosystem based approach to protecting the estuary.

During the past two years, several significant Federal efforts have focused on California water issues and the Bay/Delta. EPA's standards setting process, listing and recovery actions by the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) under the ESA, and the passage in 1992 of the Central Valley Project Improvement Act (CVPIA) provided the Federal agencies with an unprecedented opportunity to cooperatively achieve significant improvements in the Bay/Delta ecosystem while at the same time streamline these efforts to better coordinate with the State and provide a larger framework for public input into these critical issues.



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In the summer of 1993, EPA, NMFS, the USFWS and the Bureau of Reclamation (USBR) (which operates the Central Valley Project) began regular meetings both in California and in Washington D.C. to advance this cooperation. Collectively, these four agencies have become universally known as "Club FED." Club FED eventually signed an "Agreement for Coordination on California Bay/Delta Issues" that commits them to coordinate their natural resource regulatory and management activities under the Clean Water Act, the ESA and the CVPIA, and to use a comprehensive, ecosystem-based approach to the Bay/Delta.

During the remainder of 1993, EPA worked with scientists, policy makers, interest groups and the public in a series of meetings to develop a proposed set of water quality standards which reflected the commitment to an ecosystem approach. The four Federal agencies met frequently to share information and coordinate actions. This coordination was heralded not only by the interest groups but by State officials who had long criticized the Federal government for not better integrating its efforts.

On December 15, 1993, Club FED announced a comprehensive package of actions and proposals under the Clean Water Act, ESA, and CVPIA to protect the fish and wildlife resources of the San Francisco Bay/Delta estuary. In accordance with the goal of ecosystem protection, EPA's proposed regulation included salinity criteria to protect fish spawning and nursery habitat, and survival targets for migrating Chinook salmon. EPA worked carefully with USFWS so that the EPA proposals were wholly consistent with USFWS proposals to protect endangered species.

From Proposed Standards to Final Rule - Continued Coordination with Club FED, the State and the Stakeholders

Advancing EPA's Goals

EPA is focusing on four major goals as it moves towards final promulgation of the Federal rule. First, and most important, is to encourage the end of water policy gridlock in the state. This is important not only for the environmental resources at stake, but also for the water users, who desperately need more certainty as to their water supplies in order to make investment and management decisions. Second, EPA wants to build on the Federal coordination effort. This effort has progressed beyond mere coordination; expertise and resources are constantly being shared between the Federal agencies, with the result that all four agencies are benefitting from the "team" approach. Next, EPA continues to emphasize constant outreach to the State and stakeholders. This outreach effort has taken both formal approaches, such as workshops or topic-specific forums, and informal communication. In the process, EPA staff has frequently taken on a role as facilitators or intermediaries between the different interests. Finally, in working with the State and stakeholders, EPA is staying open to positive suggestions. EPA is committed to the goal of full protection of the environmental values in the Bay/Delta, but is flexible as to the means of achieving that goal. This flexibility has been presented as a challenge to stakeholders to come up with better approaches to Bay/Delta protection.



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Refining the Proposal

Club FED held joint public hearings to collect public comments on the December 15th proposals. EPA also received over 200 written comments on its proposed rule. We were very pleased to see the extent to which many of the major stakeholders invested substantial resources in reviewing the proposal and developing alternative approaches.

To increase the quality of the proposal, EPA participated in a scientific peer review process facilitated by the urban and environmental groups. That process has largely affirmed the scientific basis for the salinity standards. In addition, this review process suggested the scientific basis for a new methodology for the salmon standards that is based on actual survival data rather than predicted survival estimates. To assure that all interested parties understand these developments, EPA will publish a notice of availability and take comment on this new salmon protection methodology in August.

Also as a result of its review of the comments and continued discussions with project operators, EPA has been able to make refinements to the standards that reduce the water supply impacts by almost a third in an extended drought period while still maintaining our targeted level of protection. The potential impacts of the standards are now well within the range of impacts of the State's last draft decision and other alternatives developed by the stakeholders.

Finally, EPA held a series of meetings with stakeholder groups to discuss the economic analyses prepared in conjunction with the proposal. As a result of these meetings, the final economic analysis will be a vastly improved document more closely reflecting the economic realities of the present California water system. EPA Headquarters has been instrumental in providing additional resources and useful guidance for the economic analysis.

Legal Developments

A recent Supreme Court Decision, *Jefferson County P.U.D. v. Washington*, considerably strengthens EPA's legal position in the Bay/Delta. California had previously argued that EPA has no authority under the Clean Water Act to set water quality standards that affect water allocations. Declaring that water quality and quantity are linked, the Court found that the Clean Water Act preserves the authority of states to allocate water between users, but does not prohibit Clean Water Act water pollution controls that may affect quantities available to these users.

Club FED Coordination

Club FED is now moving towards another series of announcements for December 15, 1994. These announcements will include EPA's final standards, USFWS's designation of critical habitat for the threatened Delta smelt, USFWS's listing decision on the Sacramento splittail, and the USBR's annual water allocations for the CVP. Once again, Club FED is assuring that the



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different actions are complementary. One coordinating mechanism will be the completion of an ESA consultation on EPA's standards.

State Coordination

Federal cooperation efforts have continued with frequent meetings at all levels between Club FED and its State counterparts. One important development was the State's decision to once again initiate an effort to adopt a new water quality control plan to protect the Bay/Delta. Citing the Federal government's interference, the State had dropped out of its own standards-setting process in April 1993. The State's move to re-initiate this process is critical for a final resolution of this issue. The Federal agencies have participated in the State workshops and offered other assistance as appropriate, consistent with Federal rulemaking efforts.

A further step was taken on June 20, when the State and Federal agencies announced that they had completed a Framework Agreement to coordinate their actions in the estuary through a comprehensive ecosystem-based approach. Under the Agreement, the agencies will work towards adoption of mutually acceptable water quality standards, coordinated implementation of ESA requirements, and development of a long term planning process for water management in California. The Agreement envisions that EPA will issue final federal standards in December, and that the State will issue draft State water quality standards by the end of the year, with final State standards next spring. If the State standards are approvable, EPA would then initiate a rulemaking to withdraw the final federal standards.

Stakeholder Outreach

Significant to this process has been the strong interest and participation of key interest groups such as the California Urban Water Agencies (which includes the very important Metropolitan Water District of Southern California). This interest was highlighted recently when a coalition of California's largest employers, including BankAmerica and the Federal Reserve Bank of San Francisco, issued a letter on June 30 to the President and the Governor strongly supporting the adoption of water quality standards this year. The letter stressed that the lack of approved standards is creating uncertainty that threatens the state's economic recovery. Earlier this year, Standard and Poor's issued a warning that the credit ratings of California's largest water districts would be at risk if new standards are not adopted. EPA has worked to identify key stakeholders and provide substantive opportunities for these parties to participate in the critique of the proposed standards. Meetings with key commenters were held, additional comments were solicited, and technical forums were sponsored, all in an effort to keep the process as open and flexible as possible.

As a result of coordination efforts by all of the parties, some progress has been made in reducing the substantial differences between the interest groups. The urban agencies have been calling for standards to be adopted by the end of the year, and have endorsed the scientific basis of EPA's proposed estuarine habitat standards. They have welcomed the modifications developed by Region 9 staff, but are likely to push for additional changes. The agricultural



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groups have generally opposed the federal actions, but recently endorsed the need for new standards as part of a comprehensive approach to the Delta. The environmental groups have generally accepted the standards and modifications developed by EPA staff, but would strongly oppose any additional changes that would weaken the standards.

Beyond 1994

The package of actions announced on December 15th will be only the next step in the Bay/Delta. After promulgating final Clean Water Act standards, EPA will be working with the State on two immediate issues: (a) finalizing approvable State standards, as envisioned in the Framework Agreement, and (b) developing implementation plans to make the standards work effectively and flexibly. Further, EPA will be an active participant through Club FED in the joint Federal-State long-term planning process designed to develop long range answers to the problems of water supply and ecosystem protection. This long-term process is being defined now in ongoing talks between Club FED, the State, and the stakeholders.

